STATEMENT OF
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BEFORE THE
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
HOUSE COMMITTEE ON VETERANS' AFFAIRS

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Good morning, Chairman Coffman, Ranking Member Kuster, and Members of the Committee. Thank you for the opportunity to discuss the Department of Veterans Affairs' (VA) provision of care to Veterans by contracting with community providers. I am accompanied today by Mr. Gregory Giddens, Principal Executive Director, Office of Acquisitions, Logistics and Construction (OALC), Mr. Jan Frye, Deputy Assistant Secretary for Acquisition and Logistics, Mr. Norbert Doyle, Chief Procurement and Logistics Officer for the Veterans Health Administration (VHA), and Ms. Phillipa Anderson, Assistant General Counsel.

Introduction

VA is a provider of health-care services for Veterans. By statute, 38 United States Code (U.S.C.) § 1710, VA is authorized to provide "necessary" care to Veterans. With respect to hospital and outpatient care, VA has defined what is "necessary" by regulation, 38 Code of Federal Regulations (CFR) § 17.38, the medical benefits package. VA has been given authority, pursuant to 38 U.S.C. § 1703, to contract for that care. These contracts are governed by Federal acquisition statutes and the Federal Acquisition Regulations (FAR). This mix of in-house and community care provides Veterans the full continuum of health-care services covered under our available medical benefit offerings.

Last year VA in informal discussions with House and Senate Veterans Committee staff noted possible confusion regarding its purchased care authorities that would need to be addressed by statute. VA in its February budget noted the Department was putting forward a legislative proposal that would update its purchased

care authorities to address confusion and uncertainty surrounding its current authorities. After a period of interagency discussions, VA on May 1, 2015, provided the House and Senate Veterans Affairs Committees with a formal proposal for comprehensive reform of its purchased care authorities, including very specific requirements for non-FAR based agreements.

VA Procurement: Care in the Community

Care in the community is used to augment VA provided health care in order to meet clinical demand as well as address wait times for providing medical services, while also considering patient convenience. When VA facilities are not capable of furnishing economical care because of geographic inaccessibility or otherwise are not capable of providing the care or services required, they may contract for hospital care or medical services in accordance with 38 U.S.C. § 1703. When the demand is for infrequent or limited use, VA, through the use of individual authorizations, as described in VA Acquisition Regulation 801.670-3, may purchase hospital care or medical services from the community. VA has had a 30-year practice of using individual authorizations without applying Federal acquisition processes and procedures. This practice allows Veterans to get the best care they can get in the most efficient way possible. VA's legal basis to use non-FAR based contracts to purchase care in the community for Veterans has been challenged. Because of possible confusion regarding the authority for this practice, VA sought to clarify the authority through proposed legislation, because VA believes this practice is critical to ensuring that veterans receive health care in a timely fashion, and from locations that are close to where they reside.

In FY 2006, we spent roughly $2.7 billion dollars for care in the community. Since 2006, there has been a steady increase in individual authorizations for care in the community. In FY 2014, we spent over $7.0 billion, which represents an increase of 160 percent. This includes care purchased using individual authorizations, emergency care, and care purchased via FAR-based contracts, the majority of which was for services priced at or below comparable Medicare rates. However, VA often finds it difficult to purchase care at Medicare rates for specialty and primary care services in

underserved areas. Currently, the FY 2015 estimate is approximately $10.4 billion, which represents an increase of 55 percent over the last year.

When VA issues an individual authorization for care in the community, regulations 38 CFR 17.55 and 38 CFR 17.56 are the relied upon payment authorities. Both regulations align VA with Federal government payments under the Medicare program for preauthorized outpatient and inpatient care to eligible Veterans. VA has a comprehensive internal audit program to review claims submitted by community providers. VHA's Chief Business Office conducts multiple audits to ensure proper eligibility determinations and accurate payment of claims for care in the community. VA's Office of Business Oversight, an audit office external to VHA, conducts enterprise-wide payment accuracy and internal control reviews of non-VA care claim payments.

Finally, VA acknowledges that our long-standing procurement processes for care in the community need improvement. We will continue to work to improve our procurement practices by identifying items that should be transitioned into national contracts, maximizing the use of current national contracts, adopting a standard nomenclature, and looking for best practices to be applied across the enterprise.

Purchased Health Care Streamlining and Modernization Act

On May 1, 2015, VA submitted proposed legislation that would authorize the Secretary to enter into Veterans Care Agreements with providers, physicians and suppliers that have enrolled with Medicare and entered a provider agreement or participation agreement with Medicare; providers participating in Medicaid; and other providers the Secretary determines to be qualified. These agreements would provide relief from certain Federal contracting requirements, including competitive acquisitions procedures, but similar to VA's existing authority, payment rates for these agreements will be tied to comparable Medicare rates. Veterans Care Agreements will allow VA to provide care in a way that is similar to the operation of the Medicare and Medicaid programs as well as community care purchased for those eligible for care through the Veterans Choice program. The legislation is designed to provide a clear legal foundation for VA's continuing use of individual authorizations and provider agreements. At the same time, the legislation includes explicit protections for procurement integrity,

provider qualifications, and price reasonableness. We note that Congress enacted a similar authority that is restricted to use in the Veterans Choice Program in Public Law (P.L.) 113-146, as amended by P.L. 113-175.

Many Veterans receive care under individual authorizations. If we were to stop providing these authorizations, it would impact a large number of Veterans by compromising immediate access to care and our community providers that we rely on to care for Veterans. Because small practices and individual providers of health services would not be willing to enter into complex procurement contracts just to treat one veteran, it is likely that veterans will be deprived of care that is best for them.

Enactment of this legislation will resolve what has emerged as serious legal questions in our purchased care authorities. Without this change, Veterans will lose access to many community providers across the board in primary care, specialty care, mental health care, and extended care.

Conclusion

In conclusion, VA strongly values its relationship with community providers. We realize the important role they play in assisting us in providing timely and high quality care to Veterans. Our priority always has been to put Veterans' health and well-being first. Without the use of individual authorizations, Veterans would not receive the care they need. We look forward to working with Congress toward enactment of the proposed legislation and the critical aspect of ensuring Veterans' timely access to health care.

Mr. Chairman, I appreciate the opportunity to appear before you today. My colleagues and I look forward to answering any questions you or other Members of the Committee may have.